

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ERIN McPEAK,  
Plaintiff  
v.  
COREY BUTCHER, in his individual capacity,  
Defendant

CASE NO. 3:21-cv-05821-TL

COREY BUTCHER, in his individual capacity,

Defendant.

This matter comes before the Court *sua sponte*. On April 24, 2023, the Parties stipulated to dismissal of Defendants Centralia Police Department, Chief Stacy Denham, and Corey Denham in his official capacity. *See* Dkt. No. 58. On July 28, the Parties stipulated to the dismissal of Defendant Lewis County Sheriff's Department, as well as Defendants Kevin Albertson and Robert Snaza in both their official and individual capacities. *See* Dkt. No. 77. Before, the only Parties remaining in this matter are Plaintiff Erin McPeak and Defendant Corey Butcher in his individual capacity.

1       “Subject matter jurisdiction can never be forfeited or waived, and federal courts have a  
 2 continuing, independent obligation to determine whether subject matter jurisdiction exists.”  
 3 *Mashiri v. Dep’t of Educ.*, 724 F.3d 1028, 1031 (9th Cir. 2013); *see also Corral v. Select*  
 4 *Portfolio Servicing, Inc.*, 878 F.3d 770, 773 (9th Cir. 2017) (examining and finding lack of  
 5 diversity jurisdiction *sua sponte*). If the Court determines at any time that it lacks subject matter  
 6 jurisdiction, the Court must dismiss the action. Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y&H Corp.*,  
 7 546 U.S. 500, 514 (2006).

8       Defendant does not (and could not) assert diversity jurisdiction, as both Plaintiff and  
 9 Defendant were residents of Washington State when this matter was commenced. *See* Dkt.  
 10 No. 1-1 at 2; 28 U.S.C. § 1332. Instead, Defendant asserts federal question jurisdiction for  
 11 alleged violation of Plaintiff’s constitutional rights under the First, Fourth, Eighth, and  
 12 Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983. *See* Dkt. No. 1  
 13 at 1–2; 28 U.S.C. § 1331. However, all state actors in this matter have been dismissed, leaving  
 14 only Defendant in his individual capacity.

15       Accordingly, the Court ORDERS:

16       (1)      Defendant is ORDERED TO SHOW CAUSE by **August 14, 2023**, why this matter  
 17               should not be remanded to the Lewis County Superior Court for lack of subject  
 18               matter jurisdiction. Plaintiff may respond by **August 28, 2023**. No reply brief is  
 19               permitted. No brief shall exceed **ten (10) pages**.

20       (2)      Given the dismissal of Defendants Lewis County Sheriff’s Department, Kevin  
 21               Engelbertson, and Robert Snaza, their Motion for Summary Judgment (Dkt.  
 22               No. 50) is STRICKEN as moot.

1 (3) The matter is STAYED pending resolution of this Order.  
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4 Dated this 31st day of July 2023.  
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10 Tana Lin  
11 United States District Judge  
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